

MEMORANDUM OF LAW

DATE: April 19, 1994

TO: Robert Osby, Fire Chief

FROM: City Attorney

SUBJECT: Inspection of County Facilities within The City of San Diego

On February 28, 1994, you asked our office whether The City of San Diego Fire Department ("SDFD") has the authority to inspect County facilities such as the County Administration Building, County Courthouse, and County Operations Building located within the city limits of San Diego. In addition, you asked the question whether the SDFD is legally required to inspect County facilities located within the City limits. The answer to the first question is yes and the answer to the second question is no. The SDFD has the authority to inspect County facilities pursuant to applicable State statutes but is not legally required to inspect County facilities located in The City of San Diego. The following is our brief legal analysis.

Authority To Inspect

Health and Safety Code section 13146 provides in part,

The responsibility for enforcement of building standards adopted by the State Fire Marshal published in the California Building Standards Code relating to fire and panic safety and other regulations of the State Fire Marshal shall be as follows:

(a) The city, county, or city and county with jurisdiction in the area affected by the standard or regulation shall delegate the enforcement of the building standards relating to fire and panic safety and other regulations of the State Fire Marshal as they relate to R-3 dwellings as described in Section 1201 of Part 2 of the California Building Standards Code, to either of the following:

(1) The chief of the fire authority of the city, county, or city and county, or his or

her authorized representative.

(2) The chief building official of the city, county, or city and county, or his or her authorized representative.

(b) The chief of any city or county fire department or of any fire protection district, and their authorized representatives shall enforce within its jurisdiction the building standards and other regulations of the State Fire Marshal, except those described in subdivision (a) or (d).

....

....

(e) Any fee charged pursuant to the enforcement authority of this section shall not exceed the estimated reasonable cost of providing the service for which the fee is charged, pursuant to Section 66014 of the Government Code.

In your memorandum, you indicated that the County of San Diego has neither a Fire Department nor a Fire Prevention Bureau. Consequently, the City has the authority, pursuant to section 13146, to inspect all buildings, including County facilities, located in its City limits to insure compliance with building standards related to fire and panic safety and other regulations adopted by the State Fire Marshal.

Also, as it relates to high-rise structures, Health and Safety Code section 13217(a) provides in part, "The fire department of any city or county may annually inspect all high-rise structures for compliance with building standards and other regulations of the State Fire Marshal (emphasis added)" The SDFD has the authority to inspect all high-rise buildings located in the City limits and to charge and collect a fee for the cost of the inspection. (See Health & Safety Code section 13217(b).)

However, the SDFD does not have the authority to enforce local building and zoning regulations as it relates to County facilities located within the City limits. (See attached Report to the Honorable Mayor And City Council, dated August 25, 1988 and Memorandum of Law ("MOL"), dated July 20, 1983 from then Assistant City Attorney, Robert S. Teaze. See *Hall v. City of Taft*, 47 Cal.2d 177 (1956); *Town of Atherton v. Sup. Ct.*, 159 Cal.App.2d 417 (1958); *County of Los Angeles v. City of Los Angeles*, 212 Cal.App.2d 160 (1963); *Atkins v. Sonoma County*, 67 Cal.2d 185 (1967). As a result of the decisions in *Hall* and *Town of Atherton*, the legislature, in 1959, enacted section 53090 et seq. of the Government Code. Section 53091 provides the basic rule that "Each local agency shall comply with all applicable

building ordinances and zoning ordinances of the county or city in which the territory of the local agency is situated." "Local agency" is defined in section 53090 to include locally operating agencies of the state. However, excluded from that local agency definition are the state, cities and counties. Consequently, pursuant to legislation and case law, County facilities are not subject to local zoning and building regulations.

The legislative intent of these statutes is that cities and counties should be left free to work out their problems without giving either the power of veto over activities of the other. (See 40 Op. Cal. Att'y Gen. 243, 246 (1962).) Further, in an interim committee study conducted as a result of the Hall v. City of Taft decision, it was indicated that "... the complexity of local government has required cities and counties to get along with one another and ... usually their problems have been worked out without going to court." (See report of Cal. Assem. Int. Comm. on Municipal and County Government, Problems of Local Government Resulting from Hall v. City of Taft Case Decision, 1 (1959) Assem. J. app.)

Therefore, the SDFD has the authority to inspect County facilities for the purpose of enforcing rules and regulations promulgated by the State Fire Marshal as specified in Health and Safety Code sections, but it cannot enforce local building and zoning regulations against County facilities.

Legally Required To Inspect

This question will be analyzed by determining what, if any, liability would the City incur if it failed to inspect County facilities located in its City limits. This issue is addressed in Government Code section 818.6 which reads,

A public entity is not liable for injury caused by its failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property, other than its property (as defined in subdivision (c) of Section 830), for the purpose of determining whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety (emphasis added).

From the above section, it is clear that the SDFD would not be liable for its failure to inspect any property that does not belong to the City. The immunity granted by section 818.6 is absolute. (See Cochran v. Herzog Engraving Co., 155 Cal.App.3d 405, 411 (1984). Therefore, if the SDFD failed to inspect a County facility or even conducted a negligent inspection, it would incur no liability as it relates to damages resulting from

the inspection or lack thereof. (See attached MOL, dated July 6, 1976 which discusses whether the SDFD could be held liable for not conducting inspections at facilities owned or operated by the State or Federal government. Also relating to the MOL, see 18 Cal. Op. Att'y Gen. 148 (1951) which clearly defines what constitutes a "State Institution" for purposes of Health & Safety Code section 13108.) Again, the immunity provided by this section covers failure to make an inspection and negligence in the inspection itself. However, this section does not provide immunity for negligent acts or omissions that happen to occur while the inspection is taking place, but which do not affect the results or goals of the inspection itself. Id. at 412.

Conclusion

The SDFD has the authority to inspect County facilities located within the City limits for the purpose of enforcing rules and regulations promulgated by the State Fire Marshal. However, the SDFD does not have the authority to enforce local rules and regulations related to both building and zoning issues against County facilities located in its jurisdiction. Historically, the County as well as the City have made a good faith effort to comply with each other's rules and regulations whether it be zoning, building or fire related. This compliance with local rules and regulations should still be sought by the SDFD from County facilities located in the City limits.

Finally, the SDFD is not legally required to inspect County facilities located in its City limits. Its failure to inspect or inadequate or negligent inspection of property other than City property will not result in City liability related to the inspection or noninspection.

Don't hesitate to call if I can be of further assistance.

JOHN W. WITT, City Attorney

By

Elmer L. Heap, Jr.

Deputy City Attorney

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Attachments

cc Maureen Stapleton, Assistant City Manager

Monica Higgins, Fire Marshal

Ann Moore, Deputy City Attorney

Sam Oates, Assistant Fire Marshal

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